

# FACT SHEET: SB 145

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## **POSSESSION OF CHILD PORNOGRAPHY -AN ACT TO PREVENT THE RE-VICTIMIZATION OF CHILDREN**

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### **THE PROBLEM**

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California has the weakest child pornography possession law in the nation. The maximum sentence is less than every other state, despite the fact that Internet child pornography is one of the fastest growing crimes in America, increasing an average of 150 percent each year. The United States Department of Justice estimates that pornographers have recorded the abuse of more than one million children in the U.S. alone, with 200 new images posted daily. The Department of Justice also reports an increasing trend towards younger victims and greater brutality.

SB 145 is designed to protect children, including infants and toddlers, from particularly heinous forms of child pornography. It would provide a more meaningful deterrent to some of the most serious pornography crimes by providing increased penalties for aggravated child pornography possession.

### **BACKGROUND**

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Child pornography production necessarily involves the abuse of children, such as capturing infants being raped. When these images of rape and other sexual acts are instantly sent around the world through the Internet, children are re-victimized long after

the physical abuse. A recent *New York Times* story, "The Price of Stolen Childhood," profiled young people driven into virtual seclusion because sexual images of them are spread across the Internet.

SB 145 is needed because California has the weakest child pornography possession law of any state in the nation; no state has lower maximum sentences, as documented by a 2012 study by the National District Attorneys Association. County prosecutors have noted as an example, cases in which a person who possesses 10,000 videos of infants and toddlers, bound in leather and being sexually assaulted, currently faces a maximum of three years in state prison if prosecuted in a California state court under Penal Code section 311.11. This is true even if the offender possesses the material with the intent to "groom" other children into engaging in sex acts. Even if an offender receives the maximum sentence, he will likely serve half of that time - only 18 months. Many receive only probation.

If prosecuted for the same conduct in federal court, an offender could receive a much longer sentence. In fact, in very recent legislation, Congress amended the federal child pornography statute to allow for a maximum of 20 years' incarceration if the images involved included a prepubescent child or a child under the age of 12. If prosecuted in Arizona or

Texas for these crimes, the offender could spend his life behind bars.

The current weakness in California law is due to several factors:

1. Until 2006, California treated the conduct described above as a misdemeanor until the passage of Proposition 83 by the voters which made the crime an alternate misdemeanor/felony (wobbler). Only then could prosecutors charge the crime as a felony.

2. Judicial decisions have held that a defendant can only be convicted of one count of Penal Code section 311.11 regardless of the number of separate victims depicted in the images or videos possessed. Additionally, an offender may only be convicted of one count, regardless of the number of different computers and storage media the offender saves the images on, if they are in close proximity. Importantly, however, the courts, in their opinions, invited the Legislature to change the law to allow for convictions that consider the volume and dangerous nature of the contraband - just as we do for narcotics and illegal weapons possession.

3. The third factor causing a weakness in California's laws is the failure of the current law to distinguish between regular and egregious violations of the statute. Most other jurisdictions have increased penalties for the worst violators. For example, these laws increase the sentences when the images involve particularly young children, involve a large number of images, involve a sadomasochistic act, or are being used to groom a child. In the federal system, there are many other less egregious factors that can also increase sentences.

The federal government has been a great partner in combating child pornography; however, due to the sheer volume of cases and

federal jurisdiction and resource issues, the vast majority of child pornography cases are prosecuted in state courts.

## **SUPPORT**

- Ventura County District Attorney (Sponsor)
- Alameda County District Attorney
- California Association of District Attorneys
- California Coalition Against Sexual Assault (CAL CASA)
- California Police Chiefs Association
- Crime Victims Action Alliance
- Crime Victims United of California
- Los Angeles District Attorney
- PROTECT, America's Pro-Child, Anti-Crime Lobby
- San Bernardino Sheriff's Department

## **THE SOLUTION**

SB 145 is discretionary, but gives judges the flexibility to increase the potential maximum sentences for the following aggravated types of child pornography possession:

- Possession of more than 600 images when these images include more than 10 images of a child under the age of 12 years or a prepubescent child. Single images would count as one image. Videos would count as 50 images.
- Possession of images of children engaged in sadistic or masochistic sexual situations, which are defined in the bill. These are images where it is clear the child is in pain.
- Possession of child pornography used to groom children into various types of sexual activity.
- Under SB 145, the potential penalty for most of the crimes would be increased to a maximum of 5 years. The bill also includes lesser penalties for less egregious conduct.

- SB 145 is optional. The measure is still a wobbler (misdemeanor/felony) and still permits a judge in an appropriate case, to give probation or a misdemeanor disposition. The bill gives judges added flexibility in those rare, but egregious cases in which children have suffered terrible abuse and face continue re-victimization as their images are transferred around the globe.
- SB 145 narrowly focuses on severe forms of child pornography possession. These are the “feeder “crimes. As long as there is a demand to see sexually abused children, and possessors of this material fail to receive serious consequences, possessors will continue to fuel the production and distribution of images and the vicious cycle of child abuse will continue.